IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 18662 of 2005

Between:

Manaksia Limited

(Formerly Known as Kunststoff- Polymers Loimited),

Bollaram,, 24-A and 25,
Miyapur Industrial Area, Medak District,

rep. by its Director Mr. Sushil Agrawal

and 3 others

..... PETITIONERS

AND

The Inspector, Legal Metrology,

Weights & Measures Department Dharmavaram-515671,
Anantapur District.

.....RESPONDENT

ORDER:

Seeking a Mandamus, declaring the proceedings issued by the respondent against petitioner Nos.1 to 4 in S.T.C.No.21 of 2002 on the file of the Judicial First Class Magistrate, Dharmavaram, Anathapur District, as illegal and arbitrary, and consequently to set aside the order dated 18.11.2003 passed in Crl.M.P.No.378 of 2003 in S.T.C.No.21 of 2002, the present writ petition is filed.

The brief facts that are necessary for disposal of the writ petition may be delineated as follows:

The 1st petitioner is the manufacturing company of 'Mortein Power' mosquito coils. Petitioners 2 to 4 are the marketed companies. The petitioners are strictly following the provisions and rules made under Standard of Weights and Measures Act, 1976 (for short 'the SWM Act'), the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (for short 'the Packaged Commodities Rules') and the Insecticides Act, 1968 in manufacturing the said products and marketing the same in the public. While so, the respondent on 08.09.2000 inspected the premises of the 4th petitioner and issued a notice dated 16.10.2000 stating the petitioners are marketing the products in violation of Rule 4 and 9(3) of the Packaged Commodities Rules and also filed a complaint on the file of the Judicial First Class Magistrate, Dharmavaram, and the learned Magistrate, though the complaint is barred by limitation, took cognizance, and when the petitioners filed petition under Section 258 of Cr.p.c. in Crl.M.P.No.378 of 2003, seeking to dismiss the complaint, the same was also dismissed. Hence the writ petition,

Heard the learned counsel on either side.

The learned counsel for the petitioner contended that Rule 4 and Rule 9(3) of the Packaged Commodities Rules do not attract since the declarations were admittedly made on the package itself, therefore, there is no need to contain the declarations on

the inner wrapper and hence, *prima facie* the case does not attract under Rule 9(3) and 9(4) of the Packaged Commodities Rules. He further contended that the alleged offence is punishable with fine only and therefore, the limitation for taking cognizance of the case is only six months from the date of offence, and admittedly, the cognizance of case was taken beyond six months, therefore, he prays to allow the writ petition.

The complaint is filed by the respondent herein under Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985 for violation of Rule 4 r/w Rule 9(3) of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 and Rule 23(1) of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 punishable under Section 51(1) of the Act. A petition was filed under Section 258 of Cr.p.c. before the Judicial First Class Magistrate, Dharmavaram in Crl.M.P.No.378 of 2003 and the said petition was dismissed on the ground that *prima facie* the complaint is not barred by limitation.

Rule 9(3) of the Packaged Commodities Rules provides that where a package is provided with an outside container or wrapper such container or wrapper shall also contain all the declarations which are required to appear on the package, except where such container or wrapper itself is transparent and the declarations on the package itself are easily readable through such outside container or wrapper. Rule-23 also provides that no wholesale dealer or retail dealer shall sell, distribute, deliver, display or store for sale, any commodity in the packaged form, unless the package complies with, in all respects, the provisions of the SWM Act and the Packages Commodities Rules.

There cannot be any dispute that quashing of complaint in exercising the jurisdiction under Article 227 of the Constitution of India, the authority has no jurisdiction to proceed with the trial of the case or no case has been made out even the allegations if taken entirely. The allegation is that the inner wrapper of the product does not contain the declaration as contemplated under Rule 9(3) of the Packaged Commodities Rules. However, the learned counsel for the petitioner contended that the outer wrapper of package contains the declarations and there is no need to contain declarations in inner wrappers and hence *prima facie* case has not been made out. A plain reading of Rule 9(3) of the Packaged Commodities Rules would indicate that where a package is provided with an outside container or wrapper it

should contain all the declarations. A plain reading of the rule would also indicate that both container and wrapper shall contain the declarations if both of them do not contain declaration, rule 9(3) will attract. However, this is not for this Court to decide whether wrapper of the package should also contain declarations as required under Rule 9(3). It is left open to be decided by the learned Judicial First Class Magistrate, Dharmavaram. But *prima facie,* this Court of the opinion that not only the container, but also the wrapper shall contain the declarations.

With regard to the limitation, the learned counsel for the petitioner placed strong reliance on the decision of the Supreme Court in ***Zandu Pharmaceutical Works Ltd. Vs. Mohd.Sharaful Haque*** wherein it is held:

> "The learned Magistrate has issued process in respect of offence under Section 418 IPC. The punishment provided for the said offence is imprisonment for three years. The period of limitation in terms of Section 468(2)(c) is 3 years. That being so, the court could not have taken cognizance of the offence. Section 473 of the Code provides for extension of period in certain cases. This power can be exercised only when the court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Order of learned Magistrate does not even refer to either Section 468 or Section 473 of the Code. The High Court clearly erred in holding that the complaint was not hit by limitation. As noted above, there was not even a reference that the letter dated 5-12-2001 was in response to the letter of the complainant dated 24-11-2001. The factual position clearly shows that the complaint was nothing but a sheer abuse of the process of law and this is a case where the power under Section 482 should have been exercised. The High Court unfortunately did not take note of the guiding principles as laid down in *Bhajan Lal Case (1992 Supp(1) SCC 335* thereby rendering the judgment indefensible. The judgment of the High Court is set aside, the proceedings initiated by the complaint lodged are quashed. The appeal is allowed."

There is no dispute with regard to the proposition of law laid down by the apex court that no court shall take cognizance of the offence after expiry of period of limitation unless it is condoned under Section 473 of Cr.p.c. No such condonation petition was filed by the complainant. But the fact remains that the complaint in this case is to be filed within six months. The learned counsel for the petitioner contended that the learned magistrate took the case on file after expiry of limitation period without application of mind to various provisions of Code of Criminal Procedure. It is brought to the notice of this Court that when the complaint is filed initially, it was returned and therefore, *prima facie*, there is application of mind of the Magistrate with regard to taking cognizance of the complaint. It is not a case to be

decided by exercising the jurisdiction under Article 227 of the Constitution of India, since the learned Magistrate is competent authority to deal with the case, and all the contentions raised by the petitioner are left open. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

_____

K.C. BHANU,J

Dated: 29.08.2005

Dsr